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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFREDO DIONALDO TABRILLA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75440

Agency No. A36-780-711

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Alfredo Dionaldo Tabrilla, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's order concluding that he is removable for

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

committing an “aggravated felony” and ineligible for cancellation of removal and adjustment of status. We have jurisdiction under 8 U.S.C. § 1252. We review constitutional and legal claims de novo. *Castillo-Perez v. INS*, 212 F.3d 518, 523 (9th Cir. 2000). We grant the petition for review.

This Court recently held that a felony conviction for unlawful driving or taking a vehicle in violation of Cal. Veh. Code § 10851 is not an aggravated felony under the Immigration and Nationality Act in circumstances indistinguishable from Tabrilla’s case. *See Penuliar v. Gonzales*, 435 F.3d 961, 969-70 (9th Cir. 2006). Because Tabrilla is not an aggravated felon and his order of removal was predicated on an error of law, we remand to the BIA for proceedings consistent with this decision. *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam).

All remaining contentions are unpersuasive.

PETITION FOR REVIEW GRANTED; REMANDED.